

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANTHONY HYMAN, individually and on behalf :
of the collective,

Plaintiff, : ORDER

-v.- : 18 Civ. 5779 (GBD) (GWG)

G&G PELHAM FOOD CORP., et al., :

Defendants. :

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GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE

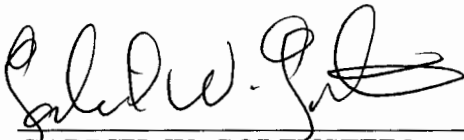
An entry of a default establishes a defendant's liability, see, e.g., Bambu Sales, Inc. v. Ozak Trading Inc., 58 F.3d 849, 854 (2d Cir. 1995), but the plaintiff must still supply adequate proof of damages, see, e.g., Cement and Concrete Workers Dist. Council Welfare Fund, Pension Fund, Annuity Fund, Educ. and Training Fund and Other Funds v. Metro Found. Contractors Inc., 699 F.3d 230, 234 (2d Cir. 2012); Credit Lyonnais Sec. (USA), Inc. v. Alcantara, 183 F.3d 151, 155 (2d Cir. 1999).

In response to the Court's Order of August 14, 2019 (Docket # 38), plaintiff has not filed an affidavit from anyone with personal knowledge of the facts relating to damages — in particular, facts relating to the amount of plaintiff's salary and his efforts to mitigate damages. Instead, plaintiff has submitted the affidavit of his attorney, who has no personal knowledge of these matters and who instead relies on the allegations of the complaint. See Affirmation, filed Oct. 11, 2019 (Docket # 41), ¶¶ 4, 6, 10. Case law, however, makes clear that such an affidavit is not permissible. See, e.g., Credit Lyonnais Sec., 183 F.3d at 154-55 (award of damages not proper where "the court had before it only the allegations in the complaint and the affidavit of plaintiff's counsel, who did not purport to have personal knowledge of the facts"). Without adequate proof, the court cannot not award any damages. See Hernandez Gomez v. 4 Runners, Inc., 769 F. App'x 1, 3 (2d Cir. 2019) (awarding zero damages when plaintiff did not submit "an inquest memorandum, accompanied by supporting affidavits and exhibits, setting forth proof of his damages" and merely cited the allegations of the complaint) (internal alteration and citation omitted).

Notwithstanding the failure of proof, the Court will give the plaintiff another opportunity to submit an affidavit on damages. Any such affidavit shall be filed by November 26, 2019. Any response may be filed 14 days after the filing of the affidavit.

SO ORDERED.

Dated: November 12, 2019
New York, New York



GABRIEL W. GORENSTEIN
United States Magistrate Judge

Copy sent to:

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Bronx, New York 10462